

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

POCAHONTAS COUNTY, IOWA,  
Petitioner,

and

COMMUNICATIONS WORKERS OF AMERICA,  
RICHARD R. JERGENS, Sheriff of  
Pocahontas County, in his official  
and individual capacities, CURTIS  
W. STOWELL, BRIAN D. LARSEN,  
MARLIN D. THEYE and BRIAN E.  
RICKLEFS,  
Intervenors.

CASE NO. 4965

93 SEP 10 PM 2:54  
PUBLIC EMPLOYMENT  
RELATIONS BOARD

DECLARATORY RULING

On August 16, 1993, Pocahontas County, Iowa (the County) filed a petition for declaratory ruling with the Public Employment Relations Board (PERB or Board) pursuant to PERB rules, 621 Iowa Admin. Code 10.1 et seq. Interested parties Communications Workers of America (CWA) Pocahontas County Sheriff Richard R. Jergens and county employees Curtis W. Stowell, Brian D. Larsen, Marlin D. Theye and Brian E. Ricklefs have all filed various documents with the Board and are hereby granted intervenor status pursuant to PERB rule 10.6.

PERB subrule 10.2(2), concerning the contents of a petition for declaratory ruling, provides that such a petition contain "[t]he specific facts upon which the board is to base its declaratory ruling. . .", and subrule 10.2(3) requires the petitioner to set forth "[t]he specific questions upon which the petitioner seeks a declaratory ruling."

Accordingly, the facts relevant to our determination are those set forth in the County's petition, which may be summarized as follows:

The County is a public employer which is and has been a party to a series of collective bargaining agreements with Intervenor CWA, a certified employee organization representing certain employees of the County sheriff's department. Intervenor Jergens is the County's sheriff and principal officer in charge of employees, including the remaining Intervenor, who are covered by the aforementioned collective bargaining agreements.

The last three collective agreements covering personnel of the sheriff's department have been for two-year periods, the current contract running through June 30, 1994. Each contained a provision concerning holiday pay. The 1988-90 agreement provided, in part:

Those employees scheduled off on an observed holiday shall receive holiday pay at eight (8) hours times their basic rate. Those employees scheduled to work on the actual holiday shall receive holiday pay at eight (8) hours times their basic rate plus one times their basic rate for all hours worked on said actual holiday.

The ensuing two agreements provided:

Those employees scheduled off on an observed holiday shall receive holiday pay at eight (8) hours times their basic rate. Those employees scheduled to work on the actual holiday shall receive holiday pay at eight (8) hours times their basic rate plus one and one-half (1-12/)[sic] times their basic rate for all hours worked on said actual holiday.

On or about November 20, 1992, the County, as plaintiff, filed a petition for a declaratory judgment with the Pocahontas County District Court, and an amended petition on January 20, 1993, which

named all Intervenor as defendants. In its amended petition the County alleges that the above-quoted holiday pay provisions were misinterpreted by Sheriff Jergens during the contracts' terms, which misinterpretation resulted in the sheriff's authorizing an overpayment of County monies to employees of the CWA-represented bargaining unit, including the employee Intervenor, for each observed holiday during the contracts' terms. The amended petition further alleges that the sheriff's authorization of the alleged overpayments violated Iowa Code §331.437 (prohibiting a county official's authorization of expenditures exceeding the amount appropriated for the official's department) and §331.476 (prohibiting allowance of claims or payments from a county fund in excess of a certain level).

The County's amended petition in the district court seeks a declaration of its rights and responsibilities under the holiday pay provisions of the respective collective bargaining agreements as well as various declarations concerning its rights and responsibilities under the aforementioned statutes and its right to recoup the alleged overpayments from the individual employees or from the sheriff. The County also seeks orders requiring accountings and restitution of the funds allegedly overpaid.

The County's petition before PERB asserts that the defendants in the judicial proceeding (Intervenor here) have "called into question" the subject matter jurisdiction of the Pocahontas County District Court due to the possible failure of the County to first exhaust its administrative remedies, based upon the rationale of

the Iowa Supreme Court in City of Des Moines v. Des Moines Police Bargaining Unit Association, 360 N.W.2d 726 (Iowa 1985).

The County's purpose in filing the instant petition before PERB is to determine the jurisdictional (exhaustion) question purportedly raised by Intervenor at this time, rather than to have the question determined later, with the possible result that a determination of the underlying merits by the district court is ultimately vacated. The County attached and incorporated into its PERB petition the aforementioned collective bargaining agreements as well as the relevant pleadings filed by the parties in the district court, and has posed to us the following questions:

1. Does the PER Board have jurisdiction over the dispute between these parties as such dispute is currently pleaded in [the County's amended petition for declaratory judgment] and answered in [the defendants' responsive pleadings] with reference to the collective bargaining agreements, in light of City of Des Moines v. Des Moines Police etc., 360 N.W.2d 729 (Iowa 1985)?

2. If the answer to the immediately preceding question is in the affirmative, is the PER Board's jurisdiction over such dispute a "negotiability dispute" as defined in I.A.C. [621] 6.3(1) et seq.?

3. If the answer to the immediately preceding question is in the negative, under what section of Iowa Code Chapter 20 and what agency rule in I.A.C. [621] does such agency jurisdiction exist over such dispute?

4. If the PER Board determines it has jurisdiction over the dispute, does it have jurisdiction to enter the award of restitution which Pocahontas County seeks?

5. If the PER Board has jurisdiction over the dispute, does it independently have the jurisdiction to determine whether Defendant Jergens has violated the statutes alleged in Count III of [the County's amended petition for declaratory judgment]?

6. If the PER Board has jurisdiction over the dispute, does it have additional jurisdiction under any

Section of Iowa Code Chapter 20 or rule in I.A.C. [621] to compel any of the Defendants to pay an award of restitution to Pocahontas County?

7. In the PER Board's practice under its declaratory ruling rules, I.A.C. [621] Chapter 10, does PER Board conduct trials or contested cases upon disputed factual matters such as those framed in [the County's amended petition for declaratory judgment and the responsive pleadings thereto] and in which a trial may last three (3) or four (4) days?

#### Motions to Dismiss

Intervenors CWA and Sheriff Jergens have filed separate motions seeking dismissal of the County's PERB petition.

In its petition, the central question which the County poses to us is whether PERB has jurisdiction over the dispute now pending in district court, keeping in mind the supreme court's pronouncements in City of Des Moines, supra.

City of Des Moines stands for the propositions that the existence of another remedy does not preclude a district court from granting declaratory relief in appropriate cases, but that a grant of such relief is not appropriate where there is a complete remedy otherwise provided by law that is intended to be exclusive. In City of Des Moines, the supreme court concluded that the issue which had there been posed to the district court was in reality a negotiability dispute such as is routinely decided by PERB as a breed of declaratory ruling, and that the agency procedure, in concert with the judicial review process provided by Iowa Code chapter 17A, were intended to be exclusive and should have been exhausted before further resort to the courts. Since the district

court had entertained and resolved the issue, its judgment was vacated and the case remanded for dismissal.

The County seeks to avoid that potential pitfall here, and in essence asks us whether the parties' dispute over the proper interpretation and application of the collective agreement, as pleaded by the parties in the district court, is a negotiability or other dispute for which PERB can provide a complete remedy. Put another way, the County asks whether chapter 20 or PERB's rules are properly applicable to the pending district court action, as pleaded.

Iowa Code §17A.9 provides:

Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision, rule or other written statement of law or policy, decision or order of the agency. Rulings disposing of petitions have the same status as agency decisions or orders in contested cases.

PERB rules 10.1 et seq. employ the same operative language. Since we view the County's questions as addressing the applicability of chapter 20 and PERB's rules to the parties' pending dispute, we believe the County's petition is properly before us.<sup>1</sup> The motions to dismiss the County's petition, as well

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<sup>1</sup>Intervenors argue that the County's PERB petition should be dismissed because there is no present dispute which is within PERB's jurisdiction (essentially, arguing that the answer to the first question posed to us by the County is "no"), and that the interpretation of the collective agreements is an issue for an arbitrator to decide pursuant to the grievance procedure established by the collective agreements themselves, rather than a question for PERB to address by declaratory ruling.

Regardless of our opinion on the question of whether the contract interpretation issue belongs before a district court or a grievance arbitrator (which is not posed to us by the County's

as Sheriff Jergens' application for attorney fees related to his motion, are consequently DENIED.

Responses to Questions Posed

Question 1: Does the PER Board have jurisdiction over the dispute between these parties as such dispute is currently pleaded in [the County's amended petition for declaratory judgment] and answered [the defendants' responsive pleadings] with reference to the collective bargaining agreement, in light of City of Des Moines v. Des Moines Police, etc., 360 N.W.2d 729 (Iowa 1985)?

Discussion and Answer. As all parties apparently agree, the determinative question at issue between the parties is the proper interpretation of the holiday pay provisions of the collective bargaining agreements. See County's PERB petition at ¶15; CWA's motion to dismiss at ¶1 and Sheriff Jergens' motion to dismiss at ¶17.

The parties also apparently agree that PERB has no jurisdiction to entertain their dispute as it is framed in the district court proceeding. See County's PERB petition at ¶18; CWA's motion to dismiss at ¶15 and Sheriff Jergens' brief at pp. 1-2. We too believe that the dispute pending in the Pocahontas County District Court, as pleaded, is not a de facto negotiability dispute, prohibited practice proceeding or other matter over which we possess statutory jurisdiction. Instead, we view the district court pleadings as presenting, initially, questions of contract

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petition), we do not perceive the parties' agreement that contract interpretation is the crux of the dispute, or their apparent agreement that the answer to the County's first question should be in the negative, as a reason to refuse to answer the County's questions. Nor do we read the County's petition as posing to us any question as to the proper interpretation of the disputed holiday pay provisions, as both moving Intervenors suggest.

interpretation and then, depending upon the interpretation given the disputed language, possibly questions concerning the interpretation of Iowa Code §§331.437 and 331.476 and the availability of the equitable remedy of restitution.

We adhere to PERB's long-stated position concerning our proper role in the interpretation of collective agreements:

[A]lthough it may be necessary to interpret a collective bargaining agreement in the course of a prohibited practice proceeding or a motion to abate impasse procedures, we do not believe it appropriate to permit utilization of the declaratory ruling process to obtain an interpretation of contractual language.

Burlington Community School District, 80 PERB 1739.

The parties' instant dispute is not pleaded as a prohibited practice complaint or a motion to abate impasse procedures, and we do not read the district court pleadings as presenting a question as to the negotiability status of the contractual provisions at issue, unlike the situation which existed in City of Des Moines, supra.

Nor do we perceive how the subsidiary issues which could conceivably arise in the parties' litigation concerning §§331.437 and 331.476, and those concerning the availability of restitution, could properly come before us in the context of the parties' present dispute. Such questions do not involve any species of law that is administered by PERB, and we would decline to issue declaratory rulings on such issues. See City of Des Moines, supra, at 731; State of Iowa, 91 PERB 4474 at pp. 8-10.



Consequently, having considered City of Des Moines, supra, we believe that PERB possesses no jurisdiction over the parties' dispute as currently pleaded. We thus answer the County's first question in the negative.

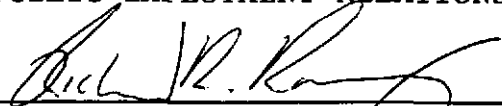
Our negative response to the County's initial question relieves us of the need to answer questions 2-6.

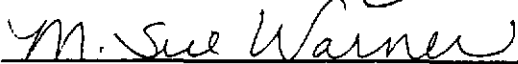
Question 7: In the PER Board's practice under its declaratory ruling rules, I.A.C. [621] Chapter 10, does PER Board conduct trials or contested cases upon disputed factual matters such as those framed in [the County's amended petition for declaratory judgment and the responsive pleadings thereto] and in which a trial may last three (3) or four (4) days?


Answer: No. In declaratory ruling proceedings pursuant to chapter 10 of PERB's rules, PERB conducts no evidentiary proceedings whatsoever and makes no findings on disputed factual matters. The "facts" upon which the Board bases declaratory rulings are those as stated in the petition itself, and PERB has consistently refused to issue declaratory rulings where determinative facts are in dispute or where a party seeks to resolve an ongoing dispute where another forum exists to more appropriately resolve the issues. See, e.g., Iowa Association of School Boards, 89 PERB 4092; State of Iowa, 91 PERB 4474.

DATED at Des Moines, Iowa this 10th day of September, 1993.

PUBLIC EMPLOYMENT RELATIONS BOARD

  
Richard R. Ramsey, Chairman

  
M. Sue Warner, Board Member

  
Dave Knock, Board Member